

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

JOHN ALEXANDER PARKER

PLAINTIFF

v.

CAUSE NO. 1:13CV367 LG-JCG

MIKE BYRD, ET AL.

DEFENDANTS

**ORDER ADOPTING REPORT AND RECOMMENDATION
AND GRANTING MOTION FOR SUMMARY JUDGMENT**

This cause comes before the Court on the Report and Recommendation [43] of United States Magistrate Judge John M. Roper, Sr., entered in this cause on July 14, 2014. Defendant Angel Myers, joined by defendants Mike Byrd and Hope Thornton, requested dismissal pursuant to Fed. R. Civ. P. 12, or in the alternative, summary judgment pursuant to Rule 56. Magistrate Judge Roper determined the Motion should be considered under Rule 56, and concluded that summary judgment in favor of the defendants was appropriate. Plaintiff received a copy of the Report and Recommendation on July 16, 2014, but he has not filed an objection to the findings or recommendations of the Magistrate Judge. Therefore, the Court need only review the Report and Recommendation and determine whether it is either clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

In this lawsuit, plaintiff brought claims alleging violation of his constitutional rights during and after his arrest for exploitation of a child, alleging he was falsely accused and convicted after his guilty plea. He also brought state law claims of false arrest and malicious prosecution. Magistrate Judge Roper noted

that plaintiff's criminal conviction had not been overturned, and therefore plaintiff's claims of constitutional violations concerning his arrest and conviction were barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). In regard to the state law claims, Magistrate Judge Roper concluded that it is not possible for plaintiff to establish a false arrest or malicious prosecution claim, because his criminal proceedings have not been terminated in his favor. Additionally, the one year statute of limitations for these claims had passed approximately two years before plaintiff filed this lawsuit.

Magistrate Judge Roper recommended that plaintiff's claims pursuant to 42 U.S.C. § 1983 be dismissed with prejudice, until such time as plaintiff has his state court conviction invalidated via appeal, post-conviction relief, habeas corpus relief, or otherwise. Judge Roper further recommended that summary judgment be granted to the defendants in regard to the state law claims. After having reviewed the Report and Recommendations, the record in this case, and the relevant law, the Court finds the Magistrate Judge's conclusions neither clearly erroneous nor contrary to law.

IT IS THEREFORE ORDERED AND ADJUDGED that the Report and Recommendation [43] of United States Magistrate Judge John M. Roper, Sr. entered in this cause on July 14, 2014, should be, and the same hereby is, adopted as the finding of this Court.

IT IS FURTHER ORDERED AND ADJUDGED that the defendants' Motion for Summary Judgment [26] is **GRANTED**. Plaintiff's claims pursuant to

42 U.S.C. § 1983 are **DISMISSED** with prejudice until such time as plaintiff demonstrates that his conviction for exploitation of a child has been invalidated. The remaining claims are **DISMISSED** with prejudice.

SO ORDERED AND ADJUDGED this the 2nd day of September, 2014.

s/ *Louis Guirola, Jr.*
LOUIS GUIROLA, JR.
CHIEF U.S. DISTRICT JUDGE